

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN CUNNINGHAM,

Plaintiff,

-against-

PORT AUTHORITY OF NY/NJ AGENCY, et al.,

Defendants.

1:23-CV-2542 (LTS)

ORDER TO SHOW
CAUSE

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order dated August 2, 2016, the court barred Plaintiff “from filing any additional papers or lawsuits without permission of the Court.” *Cunningham v. USMS*, ECF 1:05-CV-10169, 236, at 5 (S.D.N.Y. Aug. 2, 2016) (“*Cunningham I*”), *appeal dismissed*, No. 16-3222 (2d Cir. Dec. 27, 2016); *see also* ECF 1:05-CV-10169, 250, at 3. By order dated October 10, 2018, the court imposed an additional filing injunction on Plaintiff that is not relevant here, and it also made clear that the court’s *Cunningham I* filing injunction remains in effect. *In re Benjamin Cunningham*, ECF 1:17-CV-7809, 20, at 3 (S.D.N.Y. Oct. 10, 2018) (“*Cunningham II*”).

Plaintiff filed this *pro se* action on October 29, 2019, in the United States District Court for the District of New Jersey, and he paid the fees to bring this action while it was pending in that court. By order issued February 28, 2023, the District of New Jersey transferred this action to this court. (ECF 127.) Plaintiff has not sought permission of this court to litigate this action.

As the District of New Jersey noted in its February 28, 2023, transfer order, Plaintiff alleges, in his amended complaint:

that on April 5, 2019, officers with the Port Authority of New York and New Jersey (“PANYNJ”) unlawfully beat and detained Plaintiff inside the Port Authority Bus Terminal located in Manhattan. Afterwards, the officers allegedly transported Plaintiff to the psychiatric division of Mount Sinai West in Manhattan without legal cause or Plaintiff’s consent. On May 9, 2019, Plaintiff purportedly went to 4 World Trade Center in order to file a complaint with PANYNJ’s legal

department in connection with the events that allegedly took place on April 5. After a security guard in the lobby entered Plaintiff's driver's license information into the computer, several PANYNJ officers were allegedly contacted and subsequently appeared in the lobby. At this point, Plaintiff alleges that the officers "started to beat down [Plaintiff's] body for no legal reasons [and] conducted an arrest." Plaintiff was allegedly transported to the emergency room at New York Presbyterian Hospital by New York Police Department . . . officers and emergency services personnel, and was subsequently taken to a Department of Correction[] facility in Manhattan.

(*Id.* at 2) (citations and footnote omitted).

In light of Plaintiff's *pro se* status, and because of the allegations made in his amended complaint, the Court directs Plaintiff to show cause by declaration, within 30 days of the date of this order, why the Court should allow Plaintiff to litigate this action despite what appears to be his attempt to evade the *Cunningham I* filing injunction by initially filing this action in the District of New Jersey. If Plaintiff fails to comply with this order within the time allowed, and fails to show cause as to such failure, the Court will issue an order and judgment dismissing this action without prejudice, and denying all pending motions as moot, pursuant to the *Cunningham I* filing injunction.¹ A declaration form is attached to this order.

¹ The Court notes that on November 4, 2019, after Plaintiff had filed this action in the District of New Jersey, he filed another *pro se* action in that court making somewhat similar allegations arising from incidents that allegedly occurred in August 2019; that court transferred that action to this court on July 20, 2022. *See Cunningham v. Port Auth. Agency of New Jersey State and New York State*, 2:19-CV-19823 (D.N.J. July 20, 2022). By order dated August 24, 2022, this court directed Plaintiff to show cause by declaration, within 30 days, why the court should allow Plaintiff to litigate that action despite what appeared to be Plaintiff's attempt to evade the *Cunningham I* and *Cunningham II* filing injunctions by initially filing that action in the District of New Jersey. ECF 1:22-CV-6236, at 115. In an order dated September 28, 2022, the court dismissed that action because Plaintiff failed to file a declaration. ECF 1:22-CV-6236, 116. Plaintiff appealed. The United States Court of Appeals for the Second Circuit, however, noting that, in 2018, it had imposed upon Plaintiff a leave-to-file sanction as to any future appeal he brings in that court, denied him leave to appeal. *Cunningham v. Port Auth. Agency of New Jersey State and New York State*, No. 22-2653 (2d Cir. Jan. 26, 2023).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 21, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge